

AMENDED IN ASSEMBLY MAY 15, 2014

AMENDED IN ASSEMBLY APRIL 24, 2014

AMENDED IN ASSEMBLY MARCH 26, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 2244**

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**Introduced by Assembly Member Chau**

February 21, 2014

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An act to amend Section 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2244, as amended, Chau. Corporation taxes: minimum franchise tax: annual tax: dormant and inactive business entities.

The Corporation Tax Law imposes taxes on, or measured by, income, as specified. The Corporation Tax Law imposes a minimum franchise tax of \$800, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state, ~~and an annual tax in an amount equal to the minimum franchise tax on every limited liability company, limited partnership, and limited liability partnership registered, qualified to transact intrastate business, or doing business in this state, as specified.~~ *Existing law imposes an annual tax in an amount equal to the minimum franchise tax on every limited partnership, limited liability company, and limited liability partnership doing business in this state. In addition, existing law requires every limited partnership that has filed a certificate with the Secretary of State and every foreign limited partnership that has registered with the Secretary of State, every limited liability company if the articles of organization have been accepted by, or a*

*certificate of registration has been issued by, the Secretary of State, and every registered limited liability partnership and every foreign limited liability partnership that has registered with the Secretary of State, to pay an annual tax in an amount equal to the minimum franchise tax.*

This bill would reduce the minimum franchise tax to \$200 for a dormant business entity and to \$50 for an inactive business entity, *as specified*. This bill would define “dormant business entity” as a business entity that is organized under state law or has qualified to transact intrastate business in this state and that certifies under penalty of perjury with its return for the taxable year that it was not doing business in this state. This bill defines “inactive business entity” as a business entity, other than a limited partnership or a limited liability partnership, that is organized under state law or has qualified to transact intrastate business and that reasonably believes that it will not be doing business in this state for that taxable year.

By expanding the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 23153 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 23153. (a) Every corporation described in subdivision (b) shall
- 4 be subject to the minimum franchise tax specified in subdivision
- 5 (d) from the earlier of the date of incorporation, qualification, or
- 6 commencing to do business within this state, until the effective
- 7 date of dissolution or withdrawal as provided in Section 23331 or,
- 8 if later, the date the corporation ceases to do business within the
- 9 limits of this state.
- 10 (b) Unless expressly exempted by this part or the California
- 11 Constitution, subdivision (a) shall apply to each of the following:

1 (1) Every corporation that is incorporated under the laws of this  
2 state.

3 (2) Every corporation that is qualified to transact intrastate  
4 business in this state pursuant to Chapter 21 (commencing with  
5 Section 2100) of Division 1 of Title 1 of the Corporations Code.

6 (3) Every corporation that is doing business in this state.

7 (c) The following entities are not subject to the minimum  
8 franchise tax specified in this section:

9 (1) Credit unions.

10 (2) Nonprofit cooperative associations organized pursuant to  
11 Chapter 1 (commencing with Section 54001) of Division 20 of the  
12 Food and Agricultural Code that have been issued the certificate  
13 of the board of supervisors prepared pursuant to Section 54042 of  
14 the Food and Agricultural Code. The association shall be exempt  
15 from the minimum franchise tax for five consecutive taxable years,  
16 commencing with the first taxable year for which the certificate  
17 is issued pursuant to subdivision (b) of Section 54042 of the Food  
18 and Agricultural Code. This paragraph only applies to nonprofit  
19 cooperative associations organized on or after January 1, 1994.

20 (d) (1) Except as provided in paragraph (2), paragraph (1) of  
21 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)  
22 of Section 23181, and paragraph (1) of subdivision (c) of Section  
23 23183, corporations subject to the minimum franchise tax shall  
24 pay annually to the state a minimum franchise tax of eight hundred  
25 dollars (\$800).

26 (2) The minimum franchise tax shall be twenty-five dollars  
27 (\$25) for each of the following:

28 (A) A corporation formed under the laws of this state whose  
29 principal business when formed was gold mining, which is inactive  
30 and has not done business within the limits of the state since 1950.

31 (B) A corporation formed under the laws of this state whose  
32 principal business when formed was quicksilver mining, which is  
33 inactive and has not done business within the limits of the state  
34 since 1971, or has been inactive for a period of 24 consecutive  
35 months or more.

36 (3) For purposes of paragraph (2), a corporation shall not be  
37 considered to have done business if it engages in business other  
38 than mining.

39 (e) Notwithstanding subdivision (a), for taxable years beginning  
40 on or after January 1, 1999, and before January 1, 2000, every

1 “qualified new corporation” shall pay annually to the state a  
2 minimum franchise tax of five hundred dollars (\$500) for the  
3 second taxable year. This subdivision shall apply to any corporation  
4 that is a qualified new corporation and is incorporated on or after  
5 January 1, 1999, and before January 1, 2000.

6 (1) The determination of the gross receipts of a corporation, for  
7 purposes of this subdivision, shall be made by including the gross  
8 receipts of each member of the commonly controlled group, as  
9 defined in Section 25105, of which the corporation is a member.

10 (2) “Gross receipts, less returns and allowances reportable to  
11 this state,” means the sum of the gross receipts from the production  
12 of business income, as defined in subdivision (a) of Section 25120,  
13 and the gross receipts from the production of nonbusiness income,  
14 as defined in subdivision (d) of Section 25120.

15 (3) “Qualified new corporation” means a corporation that is  
16 incorporated under the laws of this state or has qualified to transact  
17 intrastate business in this state, that begins business operations at  
18 or after the time of its incorporation and that reasonably estimates  
19 that it will have gross receipts, less returns and allowances,  
20 reportable to this state for the taxable year of one million dollars  
21 (\$1,000,000) or less. “Qualified new corporation” does not include  
22 any corporation that began business operations as a sole  
23 proprietorship, a partnership, or any other form of business entity  
24 prior to its incorporation. This subdivision shall not apply to any  
25 corporation that reorganizes solely for the purpose of reducing its  
26 minimum franchise tax.

27 (4) This subdivision shall not apply to limited partnerships, as  
28 defined in Section 17935, limited liability companies, as defined  
29 in Section 17941, limited liability partnerships, as described in  
30 Section 17948, charitable corporations, as described in Section  
31 23703, regulated investment companies, as defined in Section 851  
32 of the Internal Revenue Code, real estate investment trusts, as  
33 defined in Section 856 of the Internal Revenue Code, real estate  
34 mortgage investment conduits, as defined in Section 860D of the  
35 Internal Revenue Code, qualified Subchapter S subsidiaries, as  
36 defined in Section 1361(b)(3)(B) of the Internal Revenue Code,  
37 or to the formation of any subsidiary corporation, to the extent  
38 applicable.

39 (5) For any taxable year beginning on or after January 1, 1999,  
40 and before January 1, 2000, if a corporation has qualified to pay

1 five hundred dollars (\$500) for the second taxable year under this  
2 subdivision, but in its second taxable year, the corporation's gross  
3 receipts, as determined under paragraphs (1) and (2), exceed one  
4 million dollars (\$1,000,000), an additional tax in the amount equal  
5 to three hundred dollars (\$300) for the second taxable year shall  
6 be due and payable by the corporation on the due date of its return,  
7 without regard to extension, for that year.

8 (f) (1) Notwithstanding subdivision (a), every corporation that  
9 incorporates or qualifies to do business in this state on or after  
10 January 1, 2000, shall not be subject to the minimum franchise tax  
11 for its first taxable year.

12 (2) This subdivision shall not apply to limited partnerships, as  
13 defined in Section 17935, limited liability companies, as defined  
14 in Section 17941, limited liability partnerships, as described in  
15 Section 17948, charitable corporations, as described in Section  
16 23703, regulated investment companies, as defined in Section 851  
17 of the Internal Revenue Code, real estate investment trusts, as  
18 defined in Section 856 of the Internal Revenue Code, real estate  
19 mortgage investment conduits, as defined in Section 860D of the  
20 Internal Revenue Code, and qualified Subchapter S subsidiaries,  
21 as defined in Section 1361(b)(3)(B) of the Internal Revenue Code,  
22 to the extent applicable.

23 (3) This subdivision shall not apply to any corporation that  
24 reorganizes solely for the purpose of avoiding payment of its  
25 minimum franchise tax.

26 (g) Notwithstanding subdivision (a), a domestic corporation, as  
27 defined in Section 167 of the Corporations Code, that files a  
28 certificate of dissolution in the office of the Secretary of State  
29 pursuant to subdivision (b) of Section 1905 of the Corporations  
30 Code, prior to its amendment by the act amending this subdivision,  
31 and that does not thereafter do business shall not be subject to the  
32 minimum franchise tax for taxable years beginning on or after the  
33 date of that filing.

34 (h) The minimum franchise tax imposed by paragraph (1) of  
35 subdivision (d) shall not be increased by the Legislature by more  
36 than 10 percent during any calendar year.

37 (i) (1) Notwithstanding subdivision (a), a corporation that is a  
38 small business solely owned by a deployed member of the United  
39 States Armed Forces shall not be subject to the minimum franchise

1 tax for any taxable year the owner is deployed and the corporation  
2 operates at a loss or ceases operation.

3 (2) The Franchise Tax Board may promulgate regulations as  
4 necessary or appropriate to carry out the purposes of this  
5 subdivision, including a definition for “ceases operation.”

6 (3) For the purposes of this subdivision, all of the following  
7 definitions apply:

8 (A) “Deployed” means being called to active duty or active  
9 service during a period when a Presidential Executive order  
10 specifies that the United States is engaged in combat or homeland  
11 defense. “Deployed” does not include either of the following:

12 (i) Temporary duty for the sole purpose of training or processing.

13 (ii) A permanent change of station.

14 (B) “Operates at a loss” means negative net income as defined  
15 in Section 24341.

16 (C) “Small business” means a corporation with total income  
17 from all sources derived from, or attributable to, the state of two  
18 hundred fifty thousand dollars (\$250,000) or less.

19 (4) This subdivision shall become inoperative for taxable years  
20 beginning on or after January 1, 2018.

21 (j) (1) (A) Notwithstanding subdivision (a), Section 17935,  
22 Section 17941, or Section 17948, for taxable years beginning on  
23 or after January 1, 2015, every dormant business entity shall pay  
24 annually to the state a tax of two hundred dollars (\$200) for a  
25 taxable year, and every inactive business entity shall pay annually  
26 to the state a tax of fifty dollars (\$50) for a taxable year.

27 (B) For any taxable year beginning on or after January 1, 2015,  
28 if an inactive business entity was doing business in this state, within  
29 the meaning of subdivision (a) of Section 23101, in a taxable year,  
30 an additional tax in the amount equal to seven hundred fifty dollars  
31 (\$750) for the taxable year shall be due and payable by the business  
32 entity on the due date of its return, without regard to extension,  
33 for that year.

34 (C) This subdivision shall not apply to a business entity that is  
35 ~~a majority or wholly-owned subsidiary or an affiliated business~~  
36 ~~entity of owned directly or indirectly by~~ a business entity subject  
37 to this part or Part 10 (commencing with Section 17001).

38 (D) A business entity shall not be a dormant business entity or  
39 an inactive business entity, or both, for more than a total of five  
40 taxable years.

1 (2) For the purposes of this subdivision:

2 (A) “Business entity” means a corporation, a limited partnership,  
3 as defined in Section 17935, a limited liability company, as defined  
4 in Section 17941, a limited liability partnership, as defined in  
5 Section 17948, a charitable corporation, as described in Section  
6 23703, a regulated investment company, as defined in Section 851  
7 of the Internal Revenue Code, a real estate investment trust, as  
8 defined in Section 856 of the Internal Revenue Code, a real estate  
9 mortgage investment conduit, as defined in Section 860D of the  
10 Internal Revenue Code, or a qualified Subchapter S subsidiary, as  
11 defined in Section 1361(b)(3)(B) of the Internal Revenue Code.

12 (B) “Dormant business entity” means a business entity that is  
13 organized under the laws of this state or has qualified to transact  
14 intrastate business in this state, and that certifies, under penalty of  
15 perjury, with its return for the taxable year, that it was not doing  
16 business, within the meaning of Section 23101, in this state for  
17 that taxable year. A business entity may be a dormant business  
18 entity for no more than one period of no more than five consecutive  
19 taxable years.

20 (C) “Inactive business entity” means a business entity, other  
21 than a limited partnership or a limited liability partnership, that is  
22 organized under the laws of this state or has qualified to transact  
23 intrastate business in this state, and that reasonably believes that  
24 it will not be doing business, within the meaning of Section 23101,  
25 in this state for that taxable year. A business entity may be an  
26 inactive business entity for no more than one period of no more  
27 than five consecutive taxable years.

28 SEC. 2. No reimbursement is required by this act pursuant to  
29 Section 6 of Article XIII B of the California Constitution because  
30 the only costs that may be incurred by a local agency or school  
31 district will be incurred because this act creates a new crime or  
32 infraction, eliminates a crime or infraction, or changes the penalty  
33 for a crime or infraction, within the meaning of Section 17556 of  
34 the Government Code, or changes the definition of a crime within  
35 the meaning of Section 6 of Article XIII B of the California  
36 Constitution.

37 SEC. 3. This act provides for a tax levy within the meaning of  
38 Article IV of the Constitution and shall go into immediate effect.

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